IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7078 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

K L VAGHELA

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 7078 of 1990

MR SHIVANG SHUKLA on behalf of MR YN OZA for Petitioner No. 1

MR MA BUKHARI, AGP for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 21/03/2003

ORAL JUDGEMENT

The petitioner, in this petition, has challenged the action of the respondent-authorities of reverting the petitioner without following the basis of seniority list of Deputy Mamlatdar, prepared on 15-10-1988. The petitioner has also prayed for quashing and setting aside of the order passed by the respondent No.1 on 7-9-1990,

whereby the petitioner was ordered to be reverted.

2) The brief facts giving rise to the present petition are that the petitioner was working as Deputy Mamlatdar in Sabarkantha District. The petitioner was discharging his duties with sincerity and honesty with respondent. The petitioner has started his career as a Clerk and he has worked as a Clerk for more than a decade. It is the say of the petitioner that there was some controversy about the criteria for promotion to the post of Deputy Mamlatdar from the post of Clerk. There was also controversy about the criteria of passing of pre-service examination or sub-service departmental examination, along with L.R.Q.E. Since the Government was not certain about the criteria for promotion, it applied the criteria of promotion as pre-service qualifying examination passed and therefore, the Government promoted several persons on the said basis. However, subsequently, the Government was asked to finalise the promotion rules and accordingly the Rules were finalised and it was decided that the promotions can be given only on the basis of passing L.R.Q.E. along with sub service departmental examination.

3) The petitioner has not disputed the powers of the Government to revert, as all the promotions were temporary and adhoc. The petitioner's only grievance was that the Government has applied the criteria of reversion, which was in gross violation of the mandate of Articles 14 and 16 of the Constitution of India. The Government has applied the criteria of "last come first go" ignoring the fact that the promotions, which are earlier in point of time were dehors the Rules and the Government, itself, having laid down the rules and regulated the seniority could not have applied the criteria of "last come first go". According to the petitioner, the Government should have reverted the persons in the order of seniority list. The petitioner has also submitted that similar issue arose before this Court in Special Civil Application No.5397/1990 and Special Civil Application No.6799/1990 and 6800/1990 and while disposing of the said applications, this Court has directed the Collector not to revert the petitioners of the said petitions so long as any person junior to them in the final seniority list prepared by the Collector, was retained as a Deputy Mamlatdar. It is in the above backdrop, the present petition was filed by the petitioners.

4) This petition was admitted on 21-9-1990 and ad-interim relief was granted, staying the operation,

implementation, enforcement and execution of the order of reversion and directing the respondents to operate on the basis of seniority list of Deputy Mamlatdar, prepared on 15th October, 1988 and to maintain status quo as on 6-9-1990 qua the petitioner. The said ad-interim relief was confirmed by this Court on 4-10-1990.

5) On service of Rule, appearance was filed on behalf of respondent and an affidavit in reply was also filed on 12th August, 1997. It was stated in the said affidavit in reply that the Collector, Sabarkantha published the final seniority list, wherein the name of the petitioner was shown at item No.7. It was further submitted that the said seniority list was prepared and published on 28-9-1994, as per the directions given by this Court in Special Civil Application Nos.101/1987, 7786/1990, 7808/1990, 6513/1990 and 6906/1991. It was further stated that the petitioner was promoted purely on stop gap arrangement and temporarily to meet with the contingencies on temporary post, created for the time being. Neither the petitioner was substantively promoted nor the said promotion was given against regularly sanctioned posts. It was further stated that certain clerks were promoted on the post of Deputy Mamlatdar, pursuant to re-fixation of seniority on the basis of finding given by Division Bench of this Court in the case of Safimiya Malek in Special Civil Application No.6906/1991. The said decision is reported in 33(2) GLR 8704. On account of re-fixation of seniority and on account of roaster points, some of the persons were promoted to the post of Deputy Mamlatdar. Persons so promoted were belonging to Scheduled Tribes and they were appointed against the roaster points and there could not be any question of comparative seniority against the roaster points.

6) Heard Mr.Shivang Shukla, learned advocate appearing for Mr.Y.N.Oza, learned Senior Advocate appearing for the petitioner and Mr.M.A.Bukhari, learned Assistant Government Pleader appearing for the respondents.

7) After having heard the learned advocates appearing for the parties and after having gone through their submissions, as well as the contentions urged in the memo of petition, as well as affidavit in reply, I am of the view that the grievance raised by the petitioner in this petition is not justifiable. The action of the respondent-authorities of reverting the petitioner could not be said to be arbitrary or in violation of the constitutional safeguards provided under Articles 14 and

16 of the Constitution of India. It has clearly emerged from the affidavit in reply filed by the respondents that the seniority list was prepared pursuant to the directions given by this Court in number of petitions filed by the aggrieved parties. It was also made clear in the affidavit in reply that the persons to whom the promotions were given and were retained on such promotional posts, were the persons belonging to Scheduled Tribes and they were appointed against the roaster points. Since the quota of Scheduled Caste and Scheduled Tribes were ear marked including roaster points for both the categories, there should not have been any question of interception of the quota. In view of the facts and circumstances of the case and in view of the affidavit in reply filed by the respondent-authorities, I am of the view that there was no infirmity in the order passed by the respondent No.1 and since there is no merit or substance in the petition, the same is dismissed. Rule is discharged with no order as to costs. Interim relief granted earlier stands vacated.

(K.A.Puj, J.)
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